

Union Calendar No.

109TH CONGRESS
2^D SESSION**H. R. 6134****[Report No. 109-]**

To amend the Internal Revenue Code of 1986 to expand health coverage through the use of high deductible health plans and to encourage the use of health savings accounts.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2006

Mr. CANTOR (for himself and Mr. RYAN of Wisconsin) introduced the following bill; which was referred to the Committee on Ways and Means

SEPTEMBER --, 2006

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on September 21, 2006]

A BILL

To amend the Internal Revenue Code of 1986 to expand health coverage through the use of high deductible health plans and to encourage the use of health savings accounts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Health Opportunity Pa-*
3 *tient Empowerment Act of 2006”.*

4 **SEC. 2. FSA AND HRA TERMINATIONS TO FUND HSAS.**

5 *(a) IN GENERAL.—Section 106 of the Internal Revenue*
6 *Code of 1986 (relating to contributions by employer to acci-*
7 *dent and health plans) is amended by adding at the end*
8 *the following new subsection:*

9 *“(e) FSA AND HRA TERMINATIONS TO FUND*
10 *HSAs.—*

11 *“(1) IN GENERAL.—A plan shall not fail to be*
12 *treated as a health flexible spending arrangement or*
13 *health reimbursement arrangement under this section*
14 *or section 105 merely because such plan provides for*
15 *a qualified HSA distribution.*

16 *“(2) QUALIFIED HSA DISTRIBUTION.—The term*
17 *‘qualified HSA distribution’ means a distribution*
18 *from a health flexible spending arrangement or health*
19 *reimbursement arrangement to the extent that such*
20 *distribution—*

21 *“(A) does not exceed the lesser of the balance*
22 *in such arrangement on September 21, 2006, or*
23 *as of the date of such distribution, and*

24 *“(B) is contributed by the employer directly*
25 *to the health savings account of the employee be-*
26 *fore January 1, 2012.*

1 *Such term shall not include more than 1 distribution*
2 *with respect to any arrangement.*

3 “(3) *ADDITIONAL TAX FOR FAILURE TO MAIN-*
4 *TAIN HIGH DEDUCTIBLE HEALTH PLAN COVERAGE.—*

5 “(A) *IN GENERAL.—If, at any time during*
6 *the testing period, the employee is not an eligible*
7 *individual, then the amount of the qualified*
8 *HSA distribution—*

9 “(i) *shall be includible in the gross in-*
10 *come of the employee for the taxable year in*
11 *which occurs the first month in the testing*
12 *period for which such employee is not an el-*
13 *igible individual, and*

14 “(ii) *the tax imposed by this chapter*
15 *for such taxable year on the employee shall*
16 *be increased by 10 percent of the amount*
17 *which is so includible.*

18 “(B) *EXCEPTION FOR DISABILITY OR*
19 *DEATH.—Clauses (i) and (ii) of subparagraph*
20 *(A) shall not apply if the employee ceases to be*
21 *an eligible individual by reason of the death of*
22 *the employee or the employee becoming disabled*
23 *(within the meaning of section 72(m)(7)).*

24 “(4) *DEFINITIONS AND SPECIAL RULES.—For*
25 *purposes of this subsection—*

1 “(A) *TESTING PERIOD.*—The term ‘testing
2 period’ means the period beginning with the
3 month in which the qualified HSA distribution
4 is contributed to the health savings account and
5 ending on the last day of the 12th month fol-
6 lowing such month.

7 “(B) *ELIGIBLE INDIVIDUAL.*—The term ‘eli-
8 gible individual’ has the meaning given such
9 term by section 223(c)(1).

10 “(C) *TREATMENT AS ROLLOVER CONTRIBU-*
11 *TION.*—A qualified HSA distribution shall be
12 treated as a rollover contribution described in
13 section 223(f)(5).

14 “(5) *TAX TREATMENT RELATING TO DISTRIBU-*
15 *TIONS.*—For purposes of this title—

16 “(A) *IN GENERAL.*—A qualified HSA dis-
17 tribution shall be treated as a payment described
18 in subsection (d).

19 “(B) *COMPARABILITY EXCISE TAX.*—

20 “(i) *IN GENERAL.*—Except as provided
21 in clause (ii), section 4980G shall not apply
22 to qualified HSA distributions.

23 “(ii) *FAILURE TO OFFER TO ALL EM-*
24 *PLOYEES.*—In the case of a qualified HSA
25 distribution to any employee, the failure to

1 offer such distribution to any eligible indi-
2 vidual covered under a high deductible
3 health plan of the employer shall (notwith-
4 standing section 4980G(d)) be treated for
5 purposes of section 4980G as a failure to
6 meet the requirements of section 4980G(b).”.

7 (b) *CERTAIN FSA COVERAGE DISREGARDED COV-*
8 *ERAGE.*—Subparagraph (B) of section 223(c)(1) of such
9 Code (relating to certain coverage disregarded) is amended
10 by striking “and” at the end of clause (i), by striking the
11 period at the end of clause (ii) and inserting “, and”, and
12 by inserting after clause (ii) the following new clause:

13 “(iii) for taxable years beginning after
14 December 31, 2006, coverage under a health
15 flexible spending arrangement during any
16 period immediately following the end of a
17 plan year of such arrangement during
18 which unused benefits or contributions re-
19 maining at the end of such plan year may
20 be paid or reimbursed to plan participants
21 for qualified benefit expenses incurred dur-
22 ing such period if—

23 “(I) the balance in such arrange-
24 ment at the end of such plan year is
25 zero, or

1 “(II) the individual is making a
2 qualified HSA distribution (as defined
3 in section 106(e)) in an amount equal
4 to the remaining balance in such ar-
5 rangement as of the end of such plan
6 year, in accordance with rules pre-
7 scribed by the Secretary.”.

8 (c) APPLICATION OF SECTION.—

9 (1) SUBSECTION (a).—The amendment made by
10 subsection (a) shall apply to distributions on or after
11 the date of the enactment of this Act.

12 (2) SUBSECTION (b).—The amendment made by
13 subsection (b) shall take effect on the date of the en-
14 actment of this Act.

15 **SEC. 3. REPEAL OF ANNUAL DEDUCTIBLE LIMITATION ON**
16 **HSA CONTRIBUTIONS.**

17 (a) IN GENERAL.—Paragraph (2) of section 223(b) of
18 the Internal Revenue Code of 1986 (relating to monthly lim-
19 itation) is amended—

20 (1) in subparagraph (A) by striking “the lesser
21 of—” and all that follows and inserting “\$2,250.”,
22 and

23 (2) in subparagraph (B) by striking “the lesser
24 of—” and all that follows and inserting “\$4,500.”.

1 (b) CONFORMING AMENDMENT.—Section
2 223(d)(1)(A)(ii)(I) of such Code is amended by striking
3 “subsection (b)(2)(B)(ii)” and inserting “subsection
4 (b)(2)(B)”.

5 (c) EFFECTIVE DATE.—The amendments made by this
6 section shall apply to taxable years beginning after Decem-
7 ber 31, 2006.

8 **SEC. 4. MODIFICATION OF COST-OF-LIVING ADJUSTMENT.**

9 Paragraph (1) of section 223(g) of the Internal Rev-
10 enue Code of 1986 (relating to cost-of-living adjustment) is
11 amended by adding at the end the following new flush sen-
12 tence:

13 “In the case of adjustments made for any taxable year
14 beginning after 2007, section 1(f)(4) shall be applied
15 for purposes of this paragraph by substituting ‘March
16 31’ for ‘August 31’, and the Secretary shall publish
17 the adjusted amounts under subsections (b)(2) and
18 (c)(2)(A) for taxable years beginning in any calendar
19 year no later than June 1 of the preceding calendar
20 year.”.

21 **SEC. 5. CONTRIBUTION LIMITATION NOT REDUCED FOR**
22 **PART-YEAR COVERAGE.**

23 (a) INCREASE IN LIMIT FOR INDIVIDUALS BECOMING
24 ELIGIBLE INDIVIDUALS AFTER BEGINNING OF THE
25 YEAR.—Subsection (b) of section 223 of the Internal Rev-

1 *enue Code of 1986 (relating to limitations) is amended by*
2 *adding at the end the following new paragraph:*

3 “(8) *INCREASE IN LIMIT FOR INDIVIDUALS BE-*
4 *COMING ELIGIBLE INDIVIDUALS AFTER THE BEGIN-*
5 *NING OF THE YEAR.—*

6 “(A) *IN GENERAL.—For purposes of com-*
7 *puting the limitation under paragraph (1) for*
8 *any taxable year, an individual who is an eligi-*
9 *ble individual during the last month of such tax-*
10 *able year shall be treated—*

11 “(i) *as having been an eligible indi-*
12 *vidual during each of the months in such*
13 *taxable year, and*

14 “(ii) *as having been enrolled, during*
15 *each of the months such individual is treat-*
16 *ed as an eligible individual solely by reason*
17 *of clause (i), in the same high deductible*
18 *health plan in which the individual was en-*
19 *rolled for the last month of such taxable*
20 *year.*

21 “(B) *FAILURE TO MAINTAIN HIGH DEDUCT-*
22 *IBLE HEALTH PLAN COVERAGE.—*

23 “(i) *IN GENERAL.—If, at any time*
24 *during the testing period, the individual is*
25 *not an eligible individual, then—*

1 “(I) gross income of the indi-
2 vidual for the taxable year in which
3 occurs the first month in the testing
4 period for which such individual is not
5 an eligible individual is increased by
6 the aggregate amount of all contribu-
7 tions to the health savings account of
8 the individual which could not have
9 been made but for subparagraph (A),
10 and

11 “(II) the tax imposed by this
12 chapter for any taxable year on the in-
13 dividual shall be increased by 10 per-
14 cent of the amount of such increase.

15 “(ii) *EXCEPTION FOR DISABILITY OR*
16 *DEATH.*—Subclauses (I) and (II) of clause
17 (i) shall not apply if the individual ceased
18 to be an eligible individual by reason of the
19 death of the individual or the individual be-
20 coming disabled (within the meaning of sec-
21 tion 72(m)(7)).

22 “(iii) *TESTING PERIOD.*—The term
23 ‘testing period’ means the period beginning
24 with the last month of the taxable year re-
25 ferred to in subparagraph (A) and ending

1 on the last day of the 12th month following
2 such month.”.

3 (b) *EFFECTIVE DATE.*—The amendments made by this
4 section shall apply to taxable years beginning after Decem-
5 ber 31, 2006.

6 **SEC. 6. EXCEPTION TO REQUIREMENT FOR EMPLOYERS TO**
7 **MAKE COMPARABLE HEALTH SAVINGS AC-**
8 **COUNT CONTRIBUTIONS.**

9 (a) *IN GENERAL.*—Section 4980G of the Internal Rev-
10 enue Code of 1986 (relating to failure of employer to make
11 comparable health savings account contributions) is amend-
12 ed by adding at the end the following new subsection:

13 “(d) *EXCEPTION.*—For purposes of applying section
14 4980E to a contribution to a health savings account of an
15 employee who is not a highly compensated employee (as de-
16 fined in section 414(q)), highly compensated employees shall
17 not be treated as comparable participating employees.”.

18 (b) *EFFECTIVE DATE.*—The amendment made by this
19 section shall apply to taxable years beginning after Decem-
20 ber 31, 2006.

21 **SEC. 7. ONE-TIME DISTRIBUTION FROM INDIVIDUAL RE-**
22 **TIREMENT PLANS TO FUND HSAS.**

23 (a) *IN GENERAL.*—Subsection (d) of section 408 of the
24 Internal Revenue Code of 1986 (relating to taxability of

1 *beneficiary of employees' trust) is amended by adding at*
2 *the end the following new paragraph:*

3 “(9) *DISTRIBUTION FOR HEALTH SAVINGS AC-*
4 *COUNT FUNDING.—*

5 “(A) *IN GENERAL.—In the case of an indi-*
6 *vidual who is an eligible individual (as defined*
7 *in section 223(c)) and who elects the application*
8 *of this paragraph for a taxable year, gross in-*
9 *come of the individual for the taxable year does*
10 *not include a qualified HSA funding distribu-*
11 *tion to the extent such distribution is otherwise*
12 *includible in gross income.*

13 “(B) *QUALIFIED HSA FUNDING DISTRIBUTION.—For purposes of this paragraph, the term*
14 *‘qualified HSA funding distribution’ means a*
15 *distribution from an individual retirement plan*
16 *(other than a plan described in subsection (k) or*
17 *(p)) of the employee to the extent that such dis-*
18 *tribution is contributed to the health savings ac-*
19 *count of the individual in a direct trustee-to-*
20 *trustee transfer.*

22 “(C) *LIMITATIONS.—*

23 “(i) *MAXIMUM DOLLAR LIMITATION.—*
24 *The amount excluded from gross income by*

1 subparagraph (A) shall not exceed the excess
2 of—

3 “(I) the annual limitation under
4 section 223(b) computed on the basis of
5 the type of coverage under the high de-
6 ductible health plan covering the indi-
7 vidual at the time of the qualified
8 HSA funding distribution, over

9 “(II) in the case of a distribution
10 described in clause (ii)(II), the amount
11 of the earlier qualified HSA funding
12 distribution.

13 “(ii) ONE-TIME TRANSFER.—

14 “(I) IN GENERAL.—Except as pro-
15 vided in subclause (II), an individual
16 may make an election under subpara-
17 graph (A) only for one qualified HSA
18 funding distribution during the life-
19 time of the individual. Such an elec-
20 tion, once made, shall be irrevocable.

21 “(II) CONVERSION FROM SELF-
22 ONLY TO FAMILY COVERAGE.—If a
23 qualified HSA funding distribution is
24 made during a month in a taxable
25 year during which an individual has

1 *self-only coverage under a high deduct-*
2 *ible health plan as of the first day of*
3 *the month, the individual may elect to*
4 *make an additional qualified HSA*
5 *funding distribution during a subse-*
6 *quent month in such taxable year dur-*
7 *ing which the individual has family*
8 *coverage under a high deductible health*
9 *plan as of the first day of the subse-*
10 *quent month.*

11 “(D) *FAILURE TO MAINTAIN HIGH DEDUCT-*
12 *IBLE HEALTH PLAN COVERAGE.—*

13 “(i) *IN GENERAL.—If, at any time*
14 *during the testing period, the individual is*
15 *not an eligible individual, then the aggre-*
16 *gate amount of all contributions to the*
17 *health savings account of the individual*
18 *made under subparagraph (A)—*

19 “(I) *shall be includible in the*
20 *gross income of the individual for the*
21 *taxable year in which occurs the first*
22 *month in the testing period for which*
23 *such individual is not an eligible indi-*
24 *vidual, and*

1 “(II) the tax imposed by this
2 chapter for any taxable year on the in-
3 dividual shall be increased by 10 per-
4 cent of the amount which is so includ-
5 ible.

6 “(ii) *EXCEPTION FOR DISABILITY OR*
7 *DEATH.*—Subclauses (I) and (II) of clause
8 (i) shall not apply if the individual ceased
9 to be an eligible individual by reason of the
10 death of the individual or the individual be-
11 coming disabled (within the meaning of sec-
12 tion 72(m)(7)).

13 “(iii) *TESTING PERIOD.*—The term
14 ‘testing period’ means the period beginning
15 with the month in which the qualified HSA
16 funding distribution is contributed to a
17 health savings account and ending on the
18 last day of the 12th month following such
19 month.

20 “(E) *APPLICATION OF SECTION 72.*—Not-
21 withstanding section 72, in determining the ex-
22 tent to which an amount is treated as otherwise
23 includible in gross income for purposes of sub-
24 paragraph (A), the aggregate amount distributed
25 from an individual retirement plan shall be

1 *treated as includible in gross income to the ex-*
2 *tent that such amount does not exceed the aggre-*
3 *gate amount which would have been so includible*
4 *if all amounts from all individual retirement*
5 *plans were distributed. Proper adjustments shall*
6 *be made in applying section 72 to other distribu-*
7 *tions in such taxable year and subsequent tax-*
8 *able years.”.*

9 **(b) COORDINATION WITH LIMITATION ON CONTRIBU-**
10 **TIONS TO HSAS.**—Section 223(b)(4) of such Code (relating
11 *to coordination with other contributions) is amended by*
12 *striking “and” at the end of subparagraph (A), by striking*
13 *the period at the end of subparagraph (B) and inserting*
14 *“, and”, and by inserting after subparagraph (B) the fol-*
15 *lowing new subparagraph:*

16 *“(C) the aggregate amount contributed to*
17 *health savings accounts of such individual for*
18 *such taxable year under section 408(d)(9) (and*
19 *such amount shall not be allowed as a deduction*
20 *under subsection (a)).”.*

21 **(c) EFFECTIVE DATE.**—The amendments made by this
22 *section shall apply to taxable years beginning after Decem-*
23 *ber 31, 2006.*

Union Calendar No.

109TH CONGRESS
2^D Session

H. R. 6134

[Report No. 109-]

A BILL

To amend the Internal Revenue Code of 1986 to expand health coverage through the use of high deductible health plans and to encourage the use of health savings accounts.
